

REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 11-21) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recognized that the present invention pertains to a flap shutter for combo packaging and carton packaging, in which the packaging opens automatically when unfastened. The closure can also be used for combo packaging or carton packaging, in which free-flowing substances, such as, sugar, powder, all kinds of chemicals and similar substances can be preserved and packed. When the closure functions for such combo packaging, which are produced from laminates reinforced with plastic sheeting, then it is clear that they can also be used in simple paper or carton packaging, which, owing to the absence of the laminated foils, can be torn quite easily.

More particularly, and as presently claimed, the instant invention provides a flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes a frame base element having a flat bottom side for connecting with a combo or carton packing. The frame base element further includes a peripheral projection projecting upwardly for forming an outflow support opening within said frame base element. A lid is connected to, and swivelling on, the frame base element for closing the outflow support opening formed by the frame base element and for opening and closing the frame base element. A guide element, that is capable of swivelling on the frame base element, extends over an inner side of the peripheral projection with the

swivel axis of the guide element running parallel to, and in front of, the swivel axis of the lid. There is included active forced-closure means located between the guide element and the lid for allowing the guide element to be swiveled downwardly by opening the lid for cutting, tearing or pushing downwardly a packaging lying below the guide element in a swivelling direction opposite the swivelling direction of the lid, so that when seen in a side view, the lid swivels in a first direction and the guide element swivels in a second direction with the second direction being defined in pending independent Claim 11 as being in a direction opposite to the first direction.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes active forced-closure means located between a guide element and the lid for allowing the guide element to be swiveled downwardly by opening the lid for cutting, tearing or pushing downwardly a packing lying below the guide element in a swivelling direction opposite the swivelling direction of the lid, so that the lid swivels in a first direction and the guide element swivels in an opposite direction thereto, either disclosed or suggested.

By the present amendment, Applicant has amended independent Claim 11 to attend to the correction of a typographical error which formed the basis for the Examiner's claim objection issued against Claim 11.

No substantive amendments to the claims have been entered at this time, as it is respectfully submitted that the pending claims are patentably distinguish as previously of

record, and as will now be explained.

Turning now, in detail, to an analysis of the Examiner's prior art rejection, in the third Office Action the Examiner has rejected independent Claim 11 (and the dependent claims that recite subject matter within the scope of the elected species) as being anticipated, pursuant to 35 U.S.C. §102(b), by Robichaud *et al.*, U.S. Patent No. 4,934,590. It is the Examiner's contention that the applied art of Robichaud *et al.* discloses a flap shutter for combo and carton packaging that includes a frame base element having a flat bottom side for connecting with a combo or carton packing, in addition to the remaining structural elements recited by Applicant's pending independent Claim 11, which the Examiner contends are fully disclosed by Robichaud *et al.*, thereby anticipating independent Claim 11.

In reply to the Examiner's anticipation rejection applying Robichaud *et al.*, Applicant respectfully contends that the applied citation does not, in fact, show a structurally similar closure as that of Applicant's closure because, while opening the closure of the applied prior art, the cover lid and the tongue for opening the foil are initially moving in the same direction, in that such features of the prior art package closure swivel in the same direction. The closure taught by Robichaud *et al.* functions in a manner similar to a "teeter-totter" made of elements 28 and 46.

Specifically, if one considers that which is shown in FIGS. 6 and 9 of Robichaud *et al.*, the functioning of this prior art closure becomes clear: The pour-out spout is shown on the right side in the drawing figures of the applied citation, in that the closure is

therefore seen, in respect to the pour out direction, onto its right side. Robichaud *et al.* teaches (at Col. 4, lines 18-25) that to open the package (12), the forward portion (28) or the lever (26) is pushed downwardly, while the rearward portion (30) is lifted upwardly, thereby initially breaking the frangible connection (36) and pivoting the lever (26) about the score line and the pivot axis (32). The lever (26) rotates nearly 180° until the rearward portion (30) is in a seated position over the central opening (24) of the base (18), as illustrated in FIG. 2 of Robichaud *et al.*

Consequently, for opening, element 28 is being pushed downwardly, which causes the foil therebeneath to be pierced and cut open, and the rear portion thereof is being lifted upward. Therefore, both elements 28 and 30 (or 46), respectively, swivel in the same swiveling direction. Applicant respectfully contends that this direction of swiveling can be readily seen from FIG. 7 of Robichaud *et al.* Element/part 28 can be viewed as swiveling downwardly, as shown in the clockwise direction, while part 30/46 swivels upwardly, also in a clockwise direction. Robichaud *et al.* further provides (at Col. 4, lines 61-64) that after the lever (26) is rotated nearly 180° to the open position, the rearward portion (30) is fitted into the base (18) and is held in place by complementary fastener means. Therefore, it can be said that Robichaud *et al.* teaches that, once the closure and the foil is opened, part 46 will be swiveled back, as shown in FIG. 9 of the applied citation, however, part/element 28 will remain fastened in place.

In contrast to that taught and suggested by Robichaud *et al.*, Applicant's independent Claim 11 includes the following limitation:

“active forced-closure means located between said guide element and said lid for allowing said guide element to be swiveled downwardly by opening said lid for cutting, tearing or pushing downwardly a packing lying below said guide element in a swivelling direction opposite a swivelling direction of said lid, so that when seen in a side view, said lid swivels in a first direction and said guide element swivels in a second direction, said second direction being a direction opposite said first direction.” (emphasis/underlining added)

The limitations of Applicant’s independent Claim 11, which have been underlined above, are simply not present in the closure disclosed and suggested by Robichaud *et al.* As can readily be seen from FIGS. 6 – 9 of the applied prior art, the cover (46), as well as element 28, which forms the tongue for opening the foil, both swivel in the same direction (*i.e.*, in the same clockwise direction) when viewed from the direction in which the closure is shown in FIGS. 6 – 9 of Robichaud *et al.*

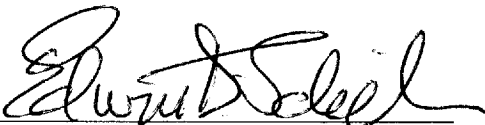
In view of the foregoing, in which Applicant’s claims recite that the lid and guide element of the claimed closure swivel in opposition directions, in contrast to that which is taught and suggested by the applied prior art of Robichaud *et al.*, it is respectfully submitted that the present invention, as now claimed, is neither anticipated by, nor obvious over, Robichaud *et al.*, and that withdrawal of the Examiner’s 35 U.S.C. §102(b) anticipation rejection of the third Office Action is respectfully requested.

In light of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (*i.e.*, Claims 11-21) recite a novel and efficient flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, which includes active forced-closure means located between a guide element and the lid for allowing the guide element to be swiveled downwardly by open-

ing the lid for cutting, tearing or pushing downwardly a packing lying below the guide element in a swivelling direction opposite the swivelling direction of the lid, so that the lid swivels in a first direction and the guide element swivels in an opposite direction thereto, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejections and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

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Enc.: 1. Petition for One-Month Extension of Time for Response; and,
2. EFT for \$65.00 (One-Month Extension Fee).

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.